

APPENDIX A.*Summary of the Allegations of the Indictment.*

I.

The time covered is from January 1, 1920 to date of indictment. (Tr. 7).

II.

Definitions.

2 (1) "Chains" or "food chains" are groups of four or more retail food stores operated under a single management (Tr. 7). These include chains engaged in other branches of food industry, such as shipping, canning, packing, processing, manufacturing, brokering and wholesaling.

(2) "Combination stores" are food stores primarily engaged in selling the same merchandise as grocery stores in combination with fresh meats (Tr. 8).

(3) "Grocery stores" are retail food stores offering for sale at retail various products (Tr. 8).

(4) "Independents" are persons operating one to three retail food stores under a single management (Tr. 8).

(5) "Manufacturers," "canners," "processors" and "packers" pack, can or process food products who do not own or operate any retail outlet for their products (Tr. 9).

(6) "Private brand," "controlled brand" and "House brand" are brands, labels or trade-marks owned by wholesale distributors, including corporate food chains (Tr. 9).

(7) "Standard brands" and "advertised brands" are food products of manufacturers, canners or processors under labels or trade-marks owned by them (Tr. 9).

(8) "Self-service stores" are retail stores where customers select merchandise and carry it away (Tr. 9).

(9) "Service stores" are retail stores where clerks are provided and deliveries are made to customers direct (Tr. 9).

(10) "Super markets" are self-service retail food stores in thickly settled centers and carrying large displays of merchandise (Tr. 10).

(11) "Wholesalers" maintain wholesale warehouses for storage and distribution to retail food stores operated by others (Tr. 10).

III.

The Defendants.

3. Gives the names and addresses of twelve corporations indicted as the A. & P. Group, each with a general office in New York and each a non-resident of Texas (Tr. 10-11).

4. Gives the names and addresses of the eight headquarters defendants indicted individually and as general officers and employes of the A. & P. Group. All are residents of New York except one, a resident of New Jersey, and the general place of business of each is in New York (Tr. 11-14).

5. Gives the names and addresses of eight individual defendants also indicted as officers and employes of the A. & P. Group. Five of them are presidents of A. & P. Divisions, one an Agent in Charge of the National Meat Department, one an Agent in Charge of Buying Office, and one the superintendent of the Dallas unit. All are non-residents of Texas except the last named (Tr. 14-15).

5a. Business Organization, Inc., a New York corporation with principal office in New York City, and its chairman of the board, Carl Byoir, are indicted. They are public relations counsel for the A. & P. Group (Tr. 15).

6. Where reference is made to an act by a corporate defendant, it shall be deemed to mean that the directors and officers of such corporation ordered, ratified or did such act on behalf of the corporation (Tr. 15).

IV.

Nature of Trade and Commerce Involved.

7. The food industry consists of activities of persons producing, preparing for consumption and moving food products to consumers (Tr. 15).

8. Dwellers in urban centers are dependent upon the activities of producers, manufacturers, canners, processors, packers, wholesalers and retailers of food products for sustenance. In the course of the stream of food flowing from producer to consumers large quantities are packed in containers or transmuted by manufacturing operations into new food products. These food distributing agencies are in effect a conduit through which food products continually flow in interstate commerce from points of production in one or more states to consumers in other states. The services thus performed are essential to the distribution of food (Tr. 15-16).

9. In 1939 there were 3,937 wholesale, general line grocery establishments, 12,045 wholesale establishments, 10,945 wholesalers of consumer goods, and 2,592 manufacturers sales branches in the United States. There were over 560,000 retail stores with sales of over \$10,000,000. Most retailers do not engage in any other branch of the food industry and are dependent on the services of those in other branches of industry for a large part of their supplies and upon the sales efforts of manufacturers, sales organizations, food brokers and wholesalers to create a consumer demand (Tr. 16).

10. In 1939 there were 387,337 grocery stores and combination stores, including supermarkets, with sales of over \$7,000,000, or about 70% of the business of all the food stores. 385,000 were owned by chains and independents. Independents owned 89.55%, with sales of 63.17%. Chains owned 10.45% with average sales of 36.82%. Independent grocery stores owned 89.92% of the grocery stores and had sales of over \$8,000; while chain grocery stores, constituting 10.08%, had average sales of over \$35,000. Independent

combination stores, 89.14% of all combination stores, had average sales of over \$20,000, while chains owning 10.86% of the combination stores, had average sales of over \$100,000. Of the \$2,800,000,000 of food sold in 1939 by food chains, 75% was sold by the 15 largest corporate food chains. The five largest chains sold 61.23% of the food sold by food chains. A. & P. sold 53% of the food sold by the five largest food chains. In 1941 the five largest food chains sold nearly 25% of the food sold by grocery and combination stores. While sales of grocery and combination stores increased between January 1, 1939 and December 31, 1941 by 16%, A. & P.'s sales increased by 24.5% (Tr. 16-17).

11. The New York Great Atlantic & Pacific Tea Company is a holding corporation, owning and holding the stock of one or another of the defendant corporations (Tr. 17-18).

12. George L. Hartford and John A. Hartford are trustees of the George H. Hartford Trust and own all of the authorized and issued stock of the New York Great Atlantic & Pacific Tea Company. The beneficiaries of said trust are members of the Hartford family (Tr. 18).

13. The New York Great Atlantic & Pacific Tea Company owns all of the authorized and outstanding stock of the Great Atlantic & Pacific Tea Company of America. The Great Atlantic & Pacific Tea Company of America owns all of the stock of the other A. & P. corporations except the Great Atlantic & Pacific Tea Company of Vermont, owned by the Great Atlantic & Pacific Tea Company of New Jersey (Tr. 18).

14 and its subdivisions describe the business of the A. & P. Group and the subsidiaries thereof (Tr. 18-23).

15. The food products manufactured, processed or purchased by the subsidiary members of the A. & P. Group are purchased in various states of the Union and in foreign countries and shipped in interstate and foreign commerce into and through other states to A. & P. warehouses, which

in turn distribute same to A. & P. retail stores, and such stores are the conduit through which such products move in interstate commerce from producers to consumers (Tr. 23).

16. Gives the number and description of the various A. & P. stores and the amount of sales of each (Tr. 24-24).

17. The A. & P. companies of New Jersey, Arizona and Nevada operate 6,412 retail food stores of which 1488 are supermarkets. These stores are served by 37 wholesale warehouses located in various places in the United States (Tr. 24).

18. Gives the names of the A. & P. companies operating in each state, number of stores therein, number of cities, the location of warehouses as of May 1, 1942 (Tr. 24-27).

19. A. & P. retail food stores are supervised by the wholesale warehouses; the warehouses procure food products to be sold and distributed through the retail stores; the advertising material of the retail stores is prepared and published by the wholesale warehouses; the warehouses keep the books of the retail stores, and store managers are accountable for all merchandise delivered to the stores and retail prices thereof. Superintendents under the direction of warehouse officers make inventories of store stocks, and the results of such inventories are checked against cash receipts, and the result is called stock result. While there are inherent stock losses in all retail food stores, there have been stock gains in A. & P. stores of millions of dollars annually (Tr. 27-28).

20. Merely alleges that the other officers and employees of the A. & P. Group are controlled and dominated by the headquarters defendants (Tr. 28).

21. Defendants by virtue of the horizontal and vertical integration of their functions and business and centralization of control thereof, have and exercise the power to dominate and control the production, prices and distribution of food and food products produced, marketed, sold and consumed in the United States (Tr. 29).

V.

Combination and Conspiracy to Restrain Trade.

22. Defendants formed and carried out in part in the Northern District of Texas a combination and conspiracy to unreasonably restrain interstate commerce in food products produced, distributed and sold throughout the United States (Tr. 29).

23. The combination and conspiracy consisted of a continuing agreement and concert of action, the substantial terms of which have been (Tr. 29):

a. Defendants select local areas and use their dominant advantage to injure competition of independent grocers, meat dealers and local chains by—

(1) Selling at retail lower than elsewhere until desired percentage of retail is obtained, using income of other areas to offset reductions in profits from such price cutting; (2) combining with national food chains to maintain such prices (Tr. 30).

b. Defendants prevent competition in selected trade areas by combining—

(1) With independent grocers, local and national food chains to fix retail prices and terms of sales; (2) with manufacturers and others to fix and maintain resale prices and policies in such areas (Tr. 30).

c. Defendants obtain discriminatory buying preference by controlling terms of sales by manufacturers and suppliers to them and competitors by—

(1) Coercing suppliers to sell on terms dictated by defendants; (2) through threats of withdrawal of patronage to maintain two prices, lower to defendants, higher to competitors; (3) by requiring suppliers to give them preferential discounts on purchases; (4) and to give protection against price increases and declines; (5) by coercing suppliers to sell direct to them at lower prices and discontinue selling direct to competitors; (6) by inducing suppliers to divert portions of their

plants to defendants' orders and then threatening to withdraw patronage unless they give defendants lower prices; (7) by obtaining options to purchase entire crops and depriving competitors access thereto; (8) by securing possession of shipments at prices to be determined after arrival in markets and upon prices controlled by them; (9) by dominating cooperative associations of growers, etc., handling substantial portions of products, and inducing them to deliver such products to defendants for disposal at terms and prices fixed by defendants; (10) by registering for export from Brazil the balance of the coffee export quota for a year, six months before its termination, cornering its supply for importation into the United States during said six months, and artificially increasing the price; (11) by coercing suppliers to grant preferential discounts on pretexts unrelated to saving or service to them by—

(a) Exacting arbitrary rebates called advertising allowances, (b) collecting brokerage where no service is rendered, (c) coercing sellers to pay them so-called brokerage on their purchases, (d) requiring independent jobbers to buy and pay profits on carlots as a condition of selling less than carlots to A. & P. stores, (e) acting as selling agent for grocers and competing shippers and as buying agent for competing jobbers, (f) creating excessive accumulations of produce through withdrawals from or failure to enter markets until prices are depressed, (g) demanding discounts for floor space rentals, etc., for pretended service to suppliers in selling defendants' merchandise at retail, and special newspaper supplement space sales and circular sales advertising only defendants' merchandise (Tr. 31-34).

d. Defendants foster false comparisons of their prices with competitors' prices and false reports to conceal their activities and perpetuate their dominance by—

(1) Publishing statements intended to foster false comparisons of their prices with prices of independent

and small local chains, (2) preparing and financing publicity for false front farmer, consumer and housewife organizations, etc., and using same in support of such false comparisons, (3) requiring suppliers subsidized by them to publish statements and give their testimony prepared by defendants in support of such comparisons, (4) secretly enhancing their actual prices above advertised prices through short-changing, short-weighting and marking up prices (Tr. 34-35).

24. For the purpose of forming and effectuating such combination and conspiracy, defendants by agreement and concert of action have done the things they conspired to do (Tr. 35).

VI.

Effects of the Conspiracy.

25. The effect of said conspiracy, as intended, has been to directly, substantially and unreasonably restrain a large part of the commerce in food products among most of the states; to destroy food manufacturers, processors, canners, wholesalers, and thousands of independent food retailers and to depress prices paid to growers of fresh fruit, etc.; to vest in defendants control of the distribution of food products in a preponderance of the large trade areas and to make it impossible for hundreds of thousands of non-integrated independents and small chains to enter into or remain in competition (Tr. 36).

VII.

Jurisdiction and Venue.

The combination and conspiracy has been entered into and carried out in part within the Dallas Division of the Northern District of Texas, wherein the Great Atlantic & Pacific Tea Company of Arizona and the Atlantic Commission Company have offices and agents and transact business. Within three years next preceding the indictment defendants have performed within the Northern District of Texas many of the acts set forth in paragraph 23, particularly

since September 1, 1939, they have advertised food products, particularly meat, below cost and below prices in other locations, for the purpose and with the intent of injuring competition of independent concerns, meat dealers and local chain stores (Tr. 36-37).

27. Defendants at the place and in the manner aforesaid, have unlawfully and intentionally engaged in a continuing combination and conspiracy to unreasonably restrain the aforesaid interstate trade and commerce in violation of the Sherman Act (Tr. 37).

COUNT TWO.

Count Two repeats the allegations of Count One and claims a combination and conspiracy to monopolize a substantial part of such interstate trade and commerce in food products (Tr. 37-46).

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